



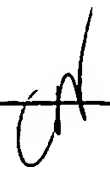
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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.          | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------------|------------------|
| 10/057,112  | 01/25/2002  | Kurt Osther          | 45579/56876                  | 1887             |
| 7590  | 07/02/2004  |                      | EXAMINER<br>MILLER, CHERYL L |                  |
| STEPHANA E. PATTON<br>EDWARDS & ANGELL, LLP<br>P.O. BOX 55874<br>BOSTON, MA 02205 |             |                      | ART UNIT<br>3738             | PAPER NUMBER     |

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                        |                               |                               |   |
|------------------------|-------------------------------|-------------------------------|---|
| <b>Advisory Action</b> | Application No.<br>10/057,112 | Applicant(s)<br>OSTHER ET AL. |   |
|                        | Examiner<br>Cheryl Miller     | Art Unit<br>3738              |  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 14 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the \_\_\_\_\_ application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 29-33,39-42 and 52

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

  
BRUCE SNOW  
PRIMARY EXAMINER

  
CHERYL MILLER

Continuation of 5. does NOT place the application in condition for allowance because: The applicant's arguments were found non-persuasive by the examiner. With reference to the applicant's argument that the specification enables the membrane to be "cell-free" was not found persuasive by the examiner. The membrane used by the applicant is made of tissue, which tissue, as known in the art contains cells. Nowhere in the specification does the applicant disclose removal of cells from the membrane, and nowhere in the specification does the applicant disclose the membrane to have an absence or omission of cells. Therefore, the specification does not preclude the use of cells in the membrane. See MPEP 706.03(o). Referring to the applicant's arguments that Vibe-Hansen (US 5,759,190), Athanasiou et al. (US 5,876,452), Pechence et al. (US 6,080,194), and Schwartz et al. (US 6,251,143) do not disclose the claimed invention, is found non-persuasive by the examiner. With reference to the Vibe-Hansen rejection, the examiner's position is believed to be adequately described in the response to arguments and rejection portions of the final office action mailed April 14, 2004. With reference to applicant's arguments that the Schwartz and Athanasiou references do not contain a composition on the surface of the membrane, but rather within, this is found non-persuasive by the examiner. Even if the compositions were within the membranes of Schwartz and Athanasiou, the compositions would be uniform throughout and extend to the surface, therefore, the surface would carry the composition also. With reference to applicant's argument that the Pachence reference does not disclose a stimulation molecule is found non-persuasive by the examiner. Pachence's membrane is made of collagen I, and therefore, collagen I proteins (of which collagen proteins are claimed by applicant to be stimulation molecules) would exist in the collagen I membrane. The applicants arguments have been found non-persuasive, the examiner's position is believed to be adequately described in the final office action mailed April 14, 2004. .